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In re Application of :
BRINER et al. :
Application No.: 09/890,311 :
PCT No.: PCT/US00/01342 :
Int. Filing Date: 19 January 2000 :
Priority Date: 27 January 1999 :
Attorney Docket No.: X-11594 :
For: AMINOALKYLBENZOFURANS AS :
SEROTONIN (5-HT(2C)) AG ONISTS :

DECISION ON PETITION
UNDER 37 CFR 1.181

This is a decision on applicants' "PETITION TO REVIVE UNDER 37 CFR 1.137(a)" which is being treated as a Petition to Withdraw a Holding of Abandonment under 37 CFR 1.181, filed in the Patent and Trademark Office (PTO) on 02 December 2002. No petition fee is due.

BACKGROUND

On 19 January 2000, applicants filed international application no. PCT/US00/01342 which claimed a priority date of 27 January 1999. A Demand was filed with the International Preliminary Examination Authority prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 27 July 2001.

On 26 July 2001, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee; a copy of the international application; and a preliminary amendment.

On 10 September 2001, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENT UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration executed by the inventor and the \$130.00 surcharge for filing after the thirty-month period was required. The notification set a TWO(2) MONTH period for response.

On 15 November 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a response to the Notification of Missing Requirements mailed 10 September 2001 within the time period set therein.

On 02 December 2002, applicants filed an executed declaration and the present petition. Applicants state in the present petition, "[a]pplicants received a Notification of Abandonment, stating that the cause for abandonment as a failure to respond to a Notification of Missing Requirements, purportedly mailed 10 September 2001. Applicants declare that no such Notice of Missing Requirements was received in Applicants' offices . . . , " therefore, petitioner's statements will be treated as a petition to withdraw holding of abandonment under 37 CFR 1.181.

DISCUSSION

With regards to applicants' request that the holding of abandonment be withdrawn, a proper showing in order to establish that papers were not received as set forth in the Official Gazette at 1156 OG 53 must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Concerning item (2) above, applicants have not provided a statement attesting that a search of the file jacket and docket records indicates that the papers were not received.

With regard to item (3) above, applicants have not provided copies of the docket record where the notification mailed 10 September 2001 would have been entered had it been received or referenced such copies in the statement by practitioner. Specifically, applicant must provide a copy of counsel's docket records for 10 November 2002 (ie, the date on which the response was due) showing all applications for which a response was due on that date.

Thus, applicants have not provided the proper showing necessary to withdraw the holding of abandonment and the petition may not be properly granted.

CONCLUSION

The petition under 37 CFR 1.181 is DISMISSED without prejudice and the application remains **ABANDONED**.

Deposit Account No. 05-0840 has been charged a \$130.00 surcharge fee under 37 CFR 492(e) for supplying an oath or declaration later than 30 months from the earliest claimed priority date.

If reconsideration on the merits of this petition is desired, an appropriate response to this decision must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

Applicant is advised that, effective May 1, 2003, the Office is changing its correspondence address. Any further correspondence with respect to this matter deposited with the United States Postal Service on or after May 1, 2003 should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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